

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

GO MEDICAL INDUSTRIES, PTY  
LTD. and ALEXANDER G.B.  
O'NEIL,

Plaintiffs,

v.

INMED CORP., d/b/a RÜSCH, and  
ALPINE MEDICAL, INC. (formerly  
known as Medical Marketing  
Group, Inc.),

Defendants.

CIVIL ACTION FILE

NO. 101-CV-0313-TWT

FILED IN OPEN COURT  
U.S.D.C. Atlanta

FEB 11 2004

LUTHER D. THOMAS, Clerk

By:

*[Signature]*  
Deputy Clerk

PLAINTIFFS' SECOND SUPPLEMENTAL REQUESTED JURY  
INSTRUCTION

247

Respectfully submitted,



PATRICK J. FLINN

Georgia Bar Number 264540

ROBIN L. McGRATH

Georgia Bar Number 493115

ANDREW J. WILSON

Georgia Bar Number 737599

LORI L. MENSHOUSE

Georgia Bar Number 502068

ALSTON & BIRD, LLP

1201 W. Peachtree Street

Atlanta, Georgia 30309-3424

Phone: (404) 881-7000

Fax: (404) 881-7777

Attorneys for Plaintiffs

GO MEDICAL INDUSTRIES PTY, LTD.

and ALEXANDER G.B. O'NEIL

**REQUESTED JURY INSTRUCTION NO. 27**

***Plaintiffs' Seventh Claim  
Common Law Trademark Infringement  
Punitive Damages***

If you find that MMG or Rüsç infringed Plaintiffs' O'NEIL trademark, then you must also determine whether Plaintiffs have proven by clear and convincing evidence that the infringing Defendant's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences, and if so, that the infringing Defendant acted with the further specific intent to cause harm to Plaintiffs.

If you find that the infringing Defendant acted in any of these manners, you may award additional damages in an amount sufficient:

- (1) to punish the infringing Defendant;
- (2) to make an example of the infringing Defendant to others;
- (3) to deter the infringing Defendant from future misconduct; or
- (4) as an approximate award to Plaintiffs of their expenses of litigation.

"Clear and convincing evidence" is evidence that produces in your mind a firm belief or conviction as to the matter at issue. Clear and convincing evidence involves a greater degree of persuasion than is necessary to meet the preponderance of the evidence standard. This standard does not require proof to an absolute certainty, since proof to an absolute certainty is seldom possible in any case.

SOURCE: Adapted from O.C.G.A. § 51-12-5.1; 5 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 30.96 (2003); KEVIN F. O'MALLEY, ET AL., FEDERAL JURY PRACTICE AND INSTRUCTIONS, CIVIL, § 104.02 (5th ed. 2000).

GIVEN: \_\_\_\_\_

REFUSED: \_\_\_\_\_

AMENDED: \_\_\_\_\_

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FOR THE NORTHERN DISTRICT OF GEORGIA  
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GO MEDICAL INDUSTRIES PTY,  
LTD., and ALEXANDER G.B. O'NEIL,

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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing PLAINTIFFS' SECOND SUPPLEMENTAL REQUESTED JURY INSTRUCTION was served upon Defendants Alpine Medical Inc. and Inmed Corp. d/b/a Rüsch by causing true and correct copies thereof to be delivered to Defendants' attorneys of record via hand delivery as follows:

**Inmed Corporation**

Robert B. Hill, Esq.  
William S. Sutton, Esq.  
McLain and Merritt, P.C., #500  
3445 Peachtree Road, N.E.  
Atlanta, Georgia 30326-9171

**Alpine Medical, Inc.**

Ron L. Quigley, Esq.  
Davis, Matthews & Quigley  
14<sup>TH</sup> Floor, Lenox Tower II  
3400 Peachtree Road, NE  
Atlanta, Georgia 30326-1186

This 11th day of February, 2004.

  
\_\_\_\_\_  
LORI L. MENSHOUSE